

Findings of Fact

Complainant is the owner and resident of a unit within the Sierra Landing Condominium community, a 136 unit garden-style condominium project located in Wheaton, Montgomery County, Maryland, having acquired her unit in February 2002. At the hearing on January 5, 2006 before the CCOC Hearing Panel, Complainant offered her own testimony and identified and introduced seven (7) exhibits, (some of which were already contained in Commission's Exhibit #1). Commission's Exhibit #1 was identified and accepted but not admitted into evidence with the exception of pages 40-157 which were stipulated by the parties to be the organizational documents of the Sierra Landing Condominium.

Complainant commenced her case by identifying Complainant's Exhibit #1, a letter from her to the Sierra Landing Condominium management agent, Claude Lumpkins of Vista Management, dated May 4, 2005, in which she protested the planned replacement of her skylights. Complainant explained that her May 4, 2005 letter was in response to a memorandum dated March 25, 2005 received by her from Respondent and identified as page 7 of Commission's Exhibit #1. Complainant's Exhibit #2, a letter dated July 22, 2004 from Respondent's attorney to Sierra Landing Condominium, was introduced and admitted, as was Complainant's Exhibit #4, a letter dated May 16, 2005, to Complainant from Respondent which was the transmittal letter to her enclosing Complainant's Exhibit #2. The attorney's July 22, 2004 letter explained the Respondent's legal position on the subject of the replacement of the skylights.

Complainant then introduced Exhibit #3, a letter dated April 29, 2004 from Colbert Roofing Corporation to Respondent, reporting the progress and problems with the roof replacement on certain roofs of the Sierra Landing Condominium. Complainant pointed out that this April 29, 2004 letter recommended the replacement of the "venting" type of skylights, and testified that her two skylights were of the "fixed" or non-venting type.

Complainant's Exhibit #5, a notice dated June 5, 2005 from Respondent to certain homeowners advising of the roof replacement and pre-construction walk through schedule, was introduced and admitted. Complainant testified that she had written a note on the notice stating "DO NOT REPLACE SKYLIGHTS IN APT. #201. THEY ARE NOT THE "VENTING" TYPE" and had posted the notice on her front door.

Complainant's Exhibit #6 was a letter dated December 23, 2005 from Complainant to the Commission explaining that her skylights had been replaced by Respondent without her consent. Complainant's Exhibit #7 was a series of photographs showing the newly replaced skylights and damage done by the installation process. Complainant's Exhibits # 6 and 7 were admitted.

Respondent's counsel questioned Complainant, who admitted that she had no expertise in roofs or skylights, and that she received the Complainant's Exhibit #2 but not the letter from Waterproofing Consulting Company ("WCC") referred to therein. She further admitted that not all units have skylights. In answer to Respondent's questions, Complainant acknowledged that she had been given the opportunity to attend several Board of Directors meetings in which the

roofing and skylight problem was discussed but that, for various reasons, she had never attended any such meetings. She also pointed out contradictory language in several communications from Respondent in which it was unclear to her what the Respondent intended the owners to pay for regarding the installation of skylights and any repairs to the unit made necessary as a result of the skylight replacement.

Chris Bodine of WCC was called as Respondent's first witness. He testified that he and WCC are consultants to property owners having problems with water intrusion into structures. Mr. Bodine testified that WCC did not at first identify that the skylights would be such a major problem on the roof replacements in the Sierra Landing Condominium, but, as the project progressed, the problems with the skylights became more apparent. Respondent introduced Respondent's Exhibit #1 through Mr. Bodine, a letter to Vista Management, dated May 27, 2005 which Mr. Bodine said was generated due to the many persistent contacts with WCC by Complainant regarding the matter of the replacement of the skylights. He testified that the contractor had attempted initially to save as many of the skylights as possible, but had eventually found that the skylights were all of a poor quality, and most had deteriorated to the extent that they became irreparably damaged in the process of replacing the roof. The biggest concern was that the contractor would not warrant the work if the skylights were not replaced. His letter of May 27, 2005 confirmed those observations. Respondent's Exhibit #1 was admitted

Claude Lumpkins was then called by Respondent, who testified that he has been the management agent of Sierra Landing Condominium for all of the pertinent time in which the roof replacement has been an issue. He testified that he received the complaints from Complainant as well as many other homeowners on the roofing and skylights replacement. The Board of Directors meetings had been quite contentious in some cases, according to Mr. Lumpkins, over these issues, but he said that eventually the homeowners who attended the meetings were satisfied that the skylights had to be replaced. Most of the arguments had come from homeowners who did not have skylights, as they did not want to have to pay for the replacement of skylights of other unit owners. He testified that the homeowners were given two choices of skylight replacements, one at a price of \$280 and one at a price of \$475, per skylight. If a homeowner failed to advise Respondent of a choice of skylight, the \$475 model was installed and billed to the homeowner. No other expenses were billed to the homeowner, and the Respondent had agreed to make the repairs to the interior of units damaged by the replacement.

In response to questions from Complainant, Mr. Lumpkins said that he did not recall if he had sent the WCC letter of May 25, 2005 (Respondent's Exhibit #1 - generated as a result of Complainant's complaints) to Complainant. Complainant testified that she had never seen the letter until produced at the hearing as an exhibit. Mr. Lumpkins advised that the Board of Directors decided not to enter into mediation with Complainant, but he did not know any reason for that decision. Respondent's attorney offered his opinion that mediation is often as costly to the Association as the hearing.

Mr. Lumpkins further testified that, under its contract with the roofing contractor, the Respondent was required to permit the contractor to replace the roof and skylights on

Complainant's building at the time the work was performed in December, 2005, notwithstanding the pending Complaint. Respondent had scheduled the work such that Complainant's building was the last in the schedule, however, if the Respondent had caused the work to stop, it would have been very costly to Respondent to bring the contractor's crews back to the job at a later date.

Conclusions of Law and Discussion

Upon a review of the organizational documents of Sierra Landing Condominium Association, Inc., the testimony, exhibits and other evidence submitted as set forth above, the Panel concludes as follows:

1. **Sierra Landing Condominium Association, Inc. had the requisite authority to require replacement of all skylights.** The Panel concludes that the Declaration and By-Laws establishing the Sierra Landing Condominium Association, Inc. empowered the Board of Directors of the Association to require the replacement of all skylights during the course of the roof replacement and to require that the unit owners pay for the replacement of the skylights appurtenant to their respective units. Under the constituent documents, the roof is a general common element and the skylights are a part of each unit. The Association is charged with the duty to maintain the general common elements and the unit owners must each maintain their respective units. However, Respondent has adequately demonstrated through its witnesses and exhibits that the skylights had reached the limit of their useful life, that they would either not be useable or reliably free from leaks after the roof around them had been taken off, or the cost of attempting to save the individual skylights would have been prohibitive. Further, retention of skylights would have jeopardized the warranty of the roofing contractor. The Respondent's proposal to require each unit owner who had a skylight to choose between two styles and prices, and setting forth a default of the more expensive skylight if a unit owner did not indicate a choice was also reasonable and within its authority. Under those facts alone, Complainant would be required to pay \$950.00 (2 x \$475) for the replacement of her two skylights. The Panel further finds that the only expenses for replacement of the skylights would be the cost of the skylights themselves, and that the Respondent had properly agreed to repair, at its cost, any damage to Complainant's unit caused by the replacement of the skylights.
2. **Mitigating Circumstances:**
 - a. **Failure to Communicate with Complainant:** Respondent produced at the hearing its Exhibit #1, the letter dated May 27, 2005 from WCC, which it and WCC admitted was prepared in response to the questions raised by Complainant. That letter plainly, succinctly and comprehensively provided the background supporting the decision of the Board of Directors to replace all of the skylights, not only the "non-venting" type. Inexplicably, that letter was apparently never provided to Complainant until the commencement of the Respondent's case at the hearing. Respondent refused to admit that it never sent the letter to Complainant,

but admitted that it did not know if it had sent it or not. The Panel finds that the failure to provide the letter to Complainant was either intentional or grossly negligent on the part of the Respondent.

- b. Failure to Enter into Mediation.** The Panel finds that the failure of Respondent to enter into mediation, as requested by Complainant, was inexcusable. Presumably, during any mediation session, the letter of May 27, 2005 of WCC would have been produced. It was apparent at the hearing that Complainant was satisfied that the May 27, 2005 letter adequately answered her many questions about the skylight replacement. Had she seen the letter prior to the hearing, the Panel believes Complainant would have dismissed the Complaint.
- c. Respondent's Violation of County Law.** Montgomery County Code, Chapter 10B, §10B-9 (f) provides that "when a dispute is filed with the Commission, a community association must not take any action to enforce or implement the association's decision...until the process under this Article is completed." In violation of the stay requirements of the foregoing subsection, Respondent replaced the roof and skylights of Complainant's unit two weeks before the hearing.

- 3. Allocation of Assessments and Costs.** While the Panel believes that the Respondent had the authority to require a unit owner who did not designate the type of skylight to be installed to receive and pay for the more expensive \$475.00 skylight, in this case, Complainant was denied the right to make that choice because of the action of the Respondent in performing the work in violation of Section 10B-9 of the County Code prior to the hearing and ruling in this matter. Therefore, the Panel requires the Complainant to pay to Respondent the cost only of the lower priced skylights, i.e., a total of \$560.00 (2 x \$280.00). The Panel's finding in paragraph 2 above, that Respondent failed to communicate with Complainant, that Respondent failed to enter into mediation, and that Respondent violated applicable County law, permits the Panel to assess costs against the Respondent in this matter under Montgomery County Code, §10B-13 (d). That provision authorizes a hearing panel to award costs, including attorney's fees, to any party under certain circumstances. The only costs incurred by Complainant of which the Panel is aware is the \$50.00 filing fee paid by Complainant to the Commission. The Panel therefore awards costs of \$50.00 against Respondent in favor of Complainant.

ORDER

Based upon the evidence on the record and for the reasons set forth above, it is this _____ day of _____, 2006, by the Commission on Common Ownership Communities:

ORDERED, that the Complainant shall pay to the Respondent the sum of \$560.00 for the replacement of her two skylights within 30 days from the date of this Order; and it is further

ORDERED, that Respondent shall complete, at its expense, the repairs to Complainant's unit caused by its replacement of Complainant's two skylights within 30 days from the date of this Order; and it is further

ORDERED, that Respondent shall reimburse Complainant \$50.00 for cost incurred by her in the filing of Complainant's Complaint within 30 days from the date of this Order.

Panel Members Nadene Neel and Robert Gramzinski concur unanimously in this decision.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of a final Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.



Louis S. Pettey, Panel Chair

Copies to:

Lisa C. Felker
11607 Elkin Street, Apt 201
Wheaton, Maryland 20902

Sierra Landing Condominium Association, Inc.
c/o Michael S. Neall, Esquire
588 Bellerive Road, Suite 1B
Annapolis, Maryland 21401